

**NORTHERN TERRITORY OF AUSTRALIA**

**PROCUREMENT REGULATIONS**

As in force at 30 March 2009

**Table of provisions**

|    |   |   |
|----|---|---|
| 1  | Citation .....  | 1 |
| 2  | Definitions.....  | 1 |
| 3  | Requisitions for supplies.....                                    | 1 |
| 4  | Requirements for tier one, tier two and tier three supplies ..... | 2 |
| 5  | Requirements for tier four and tier five supplies .....           | 2 |
| 6  | Procurement Review Board.....                                     | 3 |
| 7  | Government contracts .....  | 4 |
| 8  | Certificate of exemption.....                                     | 4 |
| 9  | Orders .....  | 4 |
| 10 | Details of certain contracts to be published .....                | 5 |

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Regulations as in force at 30 March 2009. Any amendments that commence after that date are not included.

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## PROCUREMENT REGULATIONS

### Regulations under the *Procurement Act*

#### 1 Citation

These Regulations may be cited as the *Procurement Regulations*.

#### 2 Definitions

In these Regulations:

***across government contract*** means a whole of government or common use period contract established for supplies used commonly across Agencies.

***Agency Minister***, for an Accountable Officer, means the Minister administering the Agency of the Accountable Officer.

***certificate of exemption*** means a certificate of exemption issued under regulation 8.

***order*** means an order issued under regulation 9.

***public quote*** means a quote submitted as the result of a public invitation for the submission of quotes.

***public tender*** means a tender submitted as the result of a public invitation for the submission of tenders.

***select tender*** means a tender for which the request for tender is made available to only a limited and select list of suppliers.

***tier one, tier two, tier three, tier four*** or ***tier five***, for supplies, means supplies with an estimated total value within the range specified in the definition of ***Tier One, Tier Two, Tier Three, Tier Four*** or ***Tier Five*** respectively in the procurement directions.

#### 3 Requisitions for supplies

- (1) A person shall requisition supplies for the Territory on a form approved by the Accountable Officer.

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- (2) A requisition under subregulation (1) shall be approved by the Accountable Officer.
  - (3) Before the Accountable Officer approves a requisition under subregulation (2), the requisition shall be endorsed as to the availability of funds sufficient to procure the supplies specified in the requisition.

#### **4 Requirements for tier one, tier two and tier three supplies**

- (1) Subject to these Regulations, before an amount is expended on a tier one, tier two or tier three supply, the Accountable Officer must:
  - (a) for a tier one supply – obtain at least 1 written quote; or
  - (b) for a tier two supply – obtain written quotes from at least 3 established suppliers; or
  - (c) for a tier three supply – obtain public quotes.
- (2) If the Accountable Officer is satisfied it is not practicable to comply with subregulation (1)(b) or (c), the Accountable Officer may invite the number of written quotes the Officer considers it is practicable to obtain.
- (3) However, the Accountable Officer may invite written quotes for a tier three supply only with the endorsement of a Procurement Review Board.
- (4) The Accountable Officer must record in writing the reason for acting under subregulation (2).
- (5) An Accountable Officer must, if required by a Procurement Review Board, give the Board full details of any contract arranged as the result of a quote for a tier one, tier two or tier three supply.

#### **5 Requirements for tier four and tier five supplies**

- (1) Before incurring expenditure on tier four or tier five supplies, the Accountable Officer must invite tenders for the supplies.
- (2) The tenders must be public tenders unless a certificate of exemption under regulation 8 authorises otherwise.
- (3) A tender for tier 4 or tier 5 supplies may only be accepted with the prior approval of the Procurement Review Board.

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## 6 Procurement Review Board

- (1) A Procurement Review Board established under section 6 of the Act shall consist of not less than 3 members appointed by the Minister.
- (2) The Minister may appoint a member of a Procurement Review Board to be the Chairman of the Board.
- (3) An appointment under subregulation (1) or (2) may be by reference to a particular statutory office or an office under the *Public Sector Employment and Management Act* and, where such an appointment is made, a person holding for the time being or from time to time that office or performing the duties of that office shall be the member or the Chairman, as the case may be, accordingly.
- (4) An appointment:
  - (a) under subregulation (1) may allow the member to nominate another person, being a person of a class that is specified in the instrument of appointment, to be a member in the place of the member; or
  - (b) under subregulation (2) may allow the Chairman to nominate another person, being a person of a class that is specified in the Chairman's instrument of appointment, to be the Chairman in the place of the Chairman,  
  
and a person so nominated shall be the member or the Chairman, as the case may be, accordingly, for the period for which the person was nominated.
- (5) At a meeting of a Procurement Review Board 3 members shall constitute a quorum.
- (6) Except to the extent specified in an instrument of appointment under subregulation (1) or (2), the procedures of the Procurement Review Board shall be as determined by the Chairman.
- (7) The functions of a Procurement Review Board are, subject to section 11 of the Act:
  - (a) to review all proposed procurement activity for tier four and tier five supplies;
  - (b) to review all tenders and public tender recommendations referred to it;
  - (c) to review all requests for exemption from the requirement to publicly invite tenders for tier four or tier five supplies;

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- (d) to review all recommendations for prequalifying and preselecting suppliers;
  - (e) to consider and, where it thinks appropriate or as directed by the Minister, give its approval for the acceptance of tenders referred to in regulation 5(2);
  - (g) to approve the obtaining of supplies under an existing contract between a supplier and the Commonwealth, a State or another Territory of the Commonwealth; and
  - (h) to determine the eligibility of suppliers to enter into contracts with the Territory.
- (8) A Procurement Review Board has such powers as are necessary to enable it to carry out its functions.

## **7 Government contracts**

- (1) If supplies are available to the Territory under an across government contract, the supplies must be obtained under the contract unless the Accountable Officer otherwise directs.
- (2) Where supplies are available to the Territory under an existing contract between a supplier and the Commonwealth, a State or another Territory of the Commonwealth, the supplies may be obtained subject to Procurement Review Board approval.

## **8 Certificate of exemption**

- (1) The Minister may issue a certificate of exemption for specified supplies or supplies of a specified class, irrespective of the value of the supplies.
- (2) An Accountable Officer may issue a certificate of exemption for supplies:
  - (a) with the endorsement of the Procurement Review Board; and
  - (b) for tier four and five supplies – with the approval of the Agency Minister.

## **9 Orders**

An order for supplies shall:

- (a) be in the form approved by the Accountable Officer;
- (b) be signed by the Accountable Officer; and

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- (c) contain details of the supplies specified in the requisition made under regulation 3.

**10 Details of certain contracts to be published**

- (1) The Accountable Officer must publish details of a contract for a supply in the *Gazette*.
- (2) However, publication is not required if:
  - (a) the supply is a tier one supply; or
  - (b) the supply is provided by the Territory, Commonwealth or a State or another Territory; or
  - (c) the supply is obtained under an existing contract; or
  - (d) the Minister is satisfied publication is contrary to the public interest.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

|                              |                                     |
|------------------------------|-------------------------------------|
| <b>amd = amended</b>         | <b>od = order</b>                   |
| <b>app = appendix</b>        | <b>om = omitted</b>                 |
| <b>bl = by-law</b>           | <b>pt = Part</b>                    |
| <b>ch = Chapter</b>          | <b>r = regulation/rule</b>          |
| <b>cl = clause</b>           | <b>rem = remainder</b>              |
| <b>div = Division</b>        | <b>renum = renumbered</b>           |
| <b>exp = expires/expired</b> | <b>rep = repealed</b>               |
| <b>f = forms</b>             | <b>s = section</b>                  |
| <b>Gaz = Gazette</b>         | <b>sch = Schedule</b>               |
| <b>hdg = heading</b>         | <b>sdiv = Subdivision</b>           |
| <b>ins = inserted</b>        | <b>SL = Subordinate Legislation</b> |
| <b>lt = long title</b>       | <b>sub = substituted</b>            |
| <b>nc = not commenced</b>    |                                     |

**2****LIST OF LEGISLATION*****Procurement Regulations (SL No. 15, 1995)***

|           |             |
|-----------|-------------|
| Notified  | 10 May 1992 |
| Commenced | 10 May 1992 |

***Amendments of Procurement Regulations (SL No. 24, 2000)***

|           |              |
|-----------|--------------|
| Notified  | 21 June 2000 |
| Commenced | 21 June 2000 |

***Amendments of Procurement Regulations (SL No. 40, 2001)***

|           |               |
|-----------|---------------|
| Notified  | 8 August 2001 |
| Commenced | 8 August 2001 |

***Procurement Amendment Regulations 2006 (SL No. 9, 2006)***

|           |                    |
|-----------|--------------------|
| Notified  | 1 March 2006       |
| Commenced | 1 March 2006 (r 3) |

***Procurement Amendment Regulations (No. 2) 2006 (SL No. 32, 2006)***

|           |                 |
|-----------|-----------------|
| Notified  | 18 October 2006 |
| Commenced | 18 October 2006 |

***Procurement Amendment Regulations 2007 (SL No. 34, 2007)***

|           |                 |
|-----------|-----------------|
| Notified  | 31 October 2007 |
| Commenced | 31 October 2007 |

***Procurement Amendment (Quotes for Supplies) Regulations 2009 (SL No. 7, 2009)***

|           |               |
|-----------|---------------|
| Notified  | 30 March 2009 |
| Commenced | 30 March 2009 |

**3 LIST OF AMENDMENTS**

- r 2 amd No. 40, 2001, r 1; No. 9, 2006, r 4; No. 7, 2009, r 3  
r 4 sub No. 24, 2000, r 1  
amd No. 9, 2006, r 5; No. 32, 2006, r 3  
sub No. 7, 2009, r 4  
r 5 sub No. 9, 2006, r 6  
amd No. 32, 2006, r 4  
sub No. 34, 2007, r 3  
amd No. 7, 2009, r 5  
r 6 amd No. 40, 2001, r 2; No. 9, 2006, r 7  
r 7 amd No. 9, 2006, r 8  
r 8 amd No. 24, 2000, r 2  
sub No. 9, 2006, r 9  
amd No. 32, 2006, r 5  
sub No. 34, 2007, r 4  
amd No. 7, 2009, r 6  
r 10 amd No. 9, 2006, r 10  
sub No. 7, 2009, r 7